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ABSTRACT

The eleven publications reviewed in this annotated bibliography discuss litigation and legal issues in education, such as administrator discretion in student discipline, the constitutional rights of students and teachers, defamation of character, and the school board's authority to transfer personnel. The literature also examines the issue of proving good faith, the establishment of a legal identity for principals, the necessity for following due process, the limits to an administrator's immunity from liability, and the legal aspects of managing a school's fiscal and physical resources. The authors stress that a thorough knowledge of the legal responsibilities in all areas of school operation is necessary to effective administration. (WD)

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THE BEST OF ERIC

ON EDUCATIONAL MANAGEMENT

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The Best of ERIC presents annotations of ERIC literature on important topics in educational management.

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Administrators and the Courts

1 **Alexander, Kern.** "Administrative Prerogative: Restraints of Natural Justice on Student Discipline." *Journal of Law and Education*, 7, 3 (July 1978), pp. 331-58. EJ 183 307.

Would a student accused of stealing have had the same procedural rights in the 1880s as he does today? Alexander discusses one such student theft case of 1887, describes the evolution of due process requirements since then, and concludes that if the same student had been tried today, he would have many more due process rights.

School boards and administrators have always had to function in "discretionary or quasi-judicial" capacities, making decisions having profound impacts on the lives of children. Traditionally, the courts of both Britain and the United States have been reluctant to intervene in this area to determine if school officials are acting appropriately.

More recently, however, the courts have acted to limit this "unbridled discretion" of school authorities by laying down guidelines designed to ensure fundamental fairness for students. In Britain, the courts' interventions are based on the concept of "natural justice," and in the United States on the similar concept of due process. In both countries, the new legal precedents "combine to place new and extra-statutory requirements on administrative disciplinary actions which educational administration must accommodate if students are to be given maximum legal fairness and equity."

Alexander traces the origins of the concept of natural justice back to the *Magna Carta* and outlines in some detail its development since then. The product of this indepth inquiry is a set of guidelines that suggest "the administrator's boundaries of discretion" in student discipline cases. The rudiments of "fair play" are outlined, followed by the requirements of due process as defined by British and American courts. Three requirements for an unbiased hearing are presented, followed by twelve requirements for "fairness" in a student discipline hearing.

2 **Bright, Myron H.** "The Constitution, the Judges, and the School Administrator." *NASSP Bulletin*, 63, 424 (February 1979), pp. 74-83. EJ 196 061.

Bright opens this amusing but informative article by recounting a dream he had of his distinguished principal of forty years ago. "Is it true," his former principal booms, "that federal judges are telling school administrators how to run the schools?" Bright's answer to Principal Boardman is this article, which discusses the current legal problems of the schools, particularly as Bright has seen them from the bench of the United States Court of Appeals.

Two cases decided in the 1960s "made it clear that the Constitution, not the decisions of school officials, was the supreme law of the schoolgrounds." In the *Tinker* case, decided by the Supreme Court in 1969, students were suspended for wearing black armbands in protest of United States involvement in Vietnam. The Court—deciding in favor of the students—ruled that students, too, are to be considered "persons" under the Constitution. They have fundamental rights that the school board cannot abridge. But the Supreme Court, notes Bright, has also repeatedly confirmed the authority of school officials "to prescribe and control conduct in the schools."

The 1960s also unleashed a storm of civil rights cases, many against school boards and administrators. As examples, Bright enumerates seven cases that came before his court, including cases dealing with length of hair, sex discrimination, and bases for teacher dismissal.

In addition to personal rights, states Bright, students and teachers have the protection of due process requirements. In brief, administrators must provide both students and teachers with a fair hearing before suspending or dismissing them, to protect their "liberty" and "property" interests.

3 **Clear, Delbert K.** "Negative Statements in Letters of Recommendation: From Defamation to Defense." *NASSP Bulletin*, 62, 422 (December 1978), pp. 34-43. EJ 192 368.

School administrators usually do one of two things when asked to write letters of recommendation: "they either say something good or they say nothing." Besides being professionally irresponsible, states Clear, this behavior is unnecessary, for it is quite possible to make negative recommendations "that are both educationally responsible *and* legally defensible." This excellent article shows how, using a simple checklist and an account of a court case to illustrate the legal principles involved.

If a defamation case is brought by a teacher against an administrator for statements made in letters or by other means, the first and best defense is that of truth. If the statements are substantially true, and can be proven so, the defense is complete. The "truth" questions in Clear's checklist ask the administrator if the statements are based on firsthand information, if the facts support "opinion inferences" made, if the facts are germane to the

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issue, and if emotional bias has been avoided.

Even if the truth test fails in a court case, school administrators are protected by a "conditional privilege" of immunity from negative statements they make in recommendations. This privilege may be lost, however, if it is abused.

Another series of questions in the checklist determines whether the privilege was abused. Were the statements made for a legitimate educational purpose, to an appropriate person, and did they contain only material relevant to the educational purpose? Are the statements believed to be true? Are there reasonable grounds for this belief? If any one of these tests fails, the administrator loses his privilege and can be held liable for defamatory remarks.

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4 **Delon, Floyd G.** *School Officials and the Courts: Update 1979. ERS Monograph.* Arlington, Virginia: Educational Research Service, 1979. 98 pages. ED 176 406.

Does a school administrator have a right to a hearing when he or she is terminated? Is the school board's authority to transfer personnel restricted by constitutional provisions? Does a principal's search of a student based on information obtained from the police violate the Fourth Amendment?

These questions and ninety-seven others reviewed here have been decided by various state and federal courts between 1977 and 1979. Delon summarizes these court actions by presenting the question, the facts of the case, the court's decision, and a commentary for each case. The one hundred cases are divided into nine areas: school boards, finance, contracts, collective bargaining, administrators, teachers, pupils, torts, and religion.

Although a reading of this monograph can bring one quickly up-to-date on recent issues of litigation in education, Delon advises the reader to "avoid making sweeping generalizations" from the information presented. It is particularly important, Delon continues, "to note *which* court rendered the decision"; decisions made by federal district courts or state appellate courts can often be reversed by higher courts. In addition, state decisions may deal with statutes unique to that state.

To further enhance an understanding of the court cases presented, Delon briefly discusses the courts' approaches to constitutional questions, particularly those dealing with the First and Fourteenth Amendments. Individual rights, property and liberty interests, substantive due process, and equal protection are among the constitutional issues discussed.

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5 **Delon, Floyd G.** "Update on School Personnel and School District Immunity and Liability under Section 1983, Civil Rights Act of 1871." *Journal of Law and Education,* 8, 2 (April 1979), pp. 215-22. EJ 201 316.

In the past two decades, the Civil Rights Act of 1871 (42 U.S.C. Section 1983) has become "the most frequently used basis for challenging alleged unconstitutional acts of school board members and administrators," states Delon. Section 1983 reads in part: "Every person who . . . subjects . . . any citizen . . . to the deprivation of any rights, privileges, or immunities . . . shall be liable to the party injured." Delon here reviews recent court cases that "provide a more nearly complete construction of the statute," particularly those decisions dealing with the immunity and liability of school personnel.

Court decisions in the 1960s established that board members and administrators are considered "persons" under Section 1983 and thus are subject as individuals to the provisions of the statute. Neither common law nor statutory immunity prevents actions against board members or administrators.

However, individual officials retain immunity if they act in "good faith." According to a 1975 Supreme Court decision, school officials, to demonstrate good faith, must act without malice or ill will and must not violate the constitutional rights of individuals. The Supreme Court has also recently ruled that school districts can be considered as "persons" under Section 1983, but the impact of this decision, states Delon, "remains to be seen."

Recent Supreme Court decisions also address the issue of administrator liability for First and Fourteenth Amendment violations. Recent rulings based on the "absence of protected conduct" standard, states Delon, seem "to assure that employees and pupils cannot use the exercise of a constitutional right to tie the hands of school officials when legitimate reasons exist for dismissal or expulsion." Other decisions indicate that "procedural deficiencies that do not produce provable injury cannot result in sizable damage awards."

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6 **Gluckman, Ivan B.** "Legal Aspects of the Principal's Employment." Chapter 1 in *The School Principal and the Law,* edited by Ralph D. Stern. Topeka, Kansas: National Organization on Legal Problems of Education, 1978. 12 pages. ED 172 328.

The first principals were teachers of small schools who performed some administrative duties in addition to their regular teaching tasks. As schools grew, the principalship gradually became a distinct entity. But because of the origins of the principalship, states Gluckman, "principals are still not differentiated from teachers under the law of many states." This situation is gradually changing, however; as of Gluckman's writing, fifteen states provided the basic essentials of a legal identity for the principal.

Whether or not this legal identity exists, the principal is "generally recognized under the law as an employee of the school system rather than one of its officers." Employee status has generally been beneficial for principals, Gluckman points out, for most of the legal protections recently granted to teachers have been extended to principals as well.

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For example, administrators are usually granted tenure "only by virtue of their status as teachers." Tenure gives principals certain due process rights and a measure of job security, but being defined on a par with teachers means that principals in some states can be transferred to the classroom without cause.

Even where no tenure statutes exist, principals have some job protection via their employment contracts. However, notes Gluckman, "like most contracts prepared by one party to an agreement, they provide minimal protection for the rights of the other party." Group contracts negotiated between administrator groups and school boards usually give the principal greater protection.

The principal also has the constitutional protections of due process. Again, classification as an employee appears to have an advantage: "to the extent that principals are regarded as administrators, their constitutional protection may be reduced." Gluckman also discusses the elimination of principals, particularly under the guise of "administrative reorganization."

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7 **King, Richard A.** "The Principal and the Law." *Administrator's Notebook*, 28, 2 (1979-80), pp. 1-4. EJ 221 451.

In the past few decades, numerous judicial decisions and legislative mandates have altered the principal's role. Today, says King, "the role and legal status of the principal are clearly in a state of flux." To help clarify the current legal definition of the principalship, King here examines the litigation and legislation that have recently affected the duties and responsibilities, due process rights, collective bargaining rights, and certification requirements of the principal.

There is no consensus among states concerning the definition of the principalship. In response to court and legislative mandates, however, the principal's role has recently become more clearly defined in many state statutes. Between 1971 and 1976, reports King, the number of states defining by statute the legal status of the principal rose from eight to twenty-four, according to surveys by the National Association of Secondary School Principals.

In certain states, notably Florida, the legislature has sought to clarify the role of the principal by shifting primary decision-making authority and responsibility from the central office to the school site. Although such a shift of power—usually referred to as "school site management"—has not been mandated by any state legislature, several legislative acts reviewed here by King lean in that direction.

In some areas, the courts have been closely involved in clarifying the principal's role. The constitutional rights of students, for example, have been the subject of numerous important court cases, several of which are reviewed here. The courts have limited the principal's "personal discretion" in student discipline matters, but at the same time have reaffirmed the principal's "authority to control student behavior."

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8 **Piele, Philip K.**, editor. *The Yearbook of School Law, 1979*. Topeka, Kansas: National Organization on Legal Problems of Education, 1979. 350 pages. ED 181 603.

If school administrators "constructively expel" an emotionally or physically handicapped student because they believe the student is unfit to attend public school classes, those adminstrators may be liable if due process was not followed. So determined a Texas case summarized in this volume describing and explaining hundreds of 1979 education cases. In this case, the school district had held a hearing to determine the student's fitness for public school but neglected several due process provisions, including supplying an impartial hearing examiner and giving notice of issues. Although administrators were not forced to pay damages, they were warned of possible future liability, and the district was forced to reimburse the parents for private school tuition incurred after dismissal.

Published annually for the past twenty-nine years, this yearbook summarizes and analyzes all appellate court and federal court decisions that affect schools. Issues dealt with include educational governance, employees, bargaining, pupils, finance, and property.

Another case illustrates the limits to an administrator's immunity from liability. In this Wyoming case a superintendent was judged liable for dismissing a teacher because he disapproved of the teacher's conduct outside the classroom, though such conduct is constitutionally protected. The court found that the superintendent failed to prove that he acted without malice, and he was ordered to personally pay $2,500 in damages.

This volume not only summarizes education cases but explains their implications and importance. It should be extremely helpful to administrators as both a reference book and a means of keeping abreast of the latest opinions in all critical areas of school law.

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9 **Stern, Ralph D.** "The Principal and Tort Liability." Chapter 10 in *The School Principal and the Law*, edited by Ralph D. Stern. Topeka, Kansas: National Organization on Legal Problems of Education, 1978. 16 pages. ED 172 337.

A tort, according to a dictionary definition, is "a wrongful act, not including a breach of contract or trust, which results in injury to another's person, property, reputation, or the like, and for which the injured party is entitled to compensation." The most common tort cases brought against principals, says Stern, concern "the determination of whether a principal is legally responsible for physical injuries suffered by a student," in particular injuries resulting from negligence, referred to as "unintentional torts."

It is impossible, of course, for the principal to prevent all injuries to students. The courts recognize this and will not, in general, hold a principal liable as long as "reasonable and appropriate precautions are taken" to prevent student injuries. The yardstick the courts usually use is the foresight and behavior of "a reasonably prudent person."

Defamation, another tort the principal may be involved in, involves "injuring another's good name or reputation." In many cases, the principal may believe he or she has been defamed by some other citizen who criticizes his or her performance. There is little redress in such cases, for the United States Supreme Court,

quoted by Stern, recognizes a "profound national commitment" to open debate that "may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials."

In cases brought against the principal for defamation, says Stern, the principal is usually safe unless the statements made were knowingly false or malicious in nature. Principals also have a "conditional privilege" of immunity against defamation suits, which "is intended to permit government officials to perform their duties without undue fear of being held liable for what they write or say." Stern also briefly discusses tort liabilities resulting from the deprivation of constitutional rights.

10 **Strahan, Richard D.** "Managing a School's Fiscal and Physical Resources." Chapter 11 in *The School Principal and the Law*, edited by Ralph D. Stern. Topeka, Kansas: National Organization on Legal Problems of Education, 1978. 13 pages. ED 172 338.

To be a good instructional leader, it is essential that the principal also be proficient in the management of the school's fiscal and physical resources. In addition to basic management skills, the principal should have full knowledge of his or her legal responsibilities in all areas of school operation. To help principals acquire this knowledge, Strahan here examines the "statutory and case law guidelines that are vital to good building and program management."

Most school districts have policy statements that impose responsibility for the school's property on the building administrator. On assuming a principalship, Strahan advises, the new principal "should satisfy himself or herself that the entire inventory of school property he or she is assuming is intact." Strahan suggests that the principal insist on an internal audit of all school accounts, equipment, textbooks, and supplies before signing any document that acknowledges appointment and control.

The principal is also usually liable for managing cocurricular funds, even though the funds are not generated by taxation. Strahan discusses several cases in which principals were charged with incompetence because of their "improper management of extraclass funds." An added benefit of adept management of various funds, Strahan points out, is that it generates confidence in the principal's management abilities.

Another potential area of principal liability is in the purchase of class rings, class and individual photographs, caps and gowns, and so forth. Strahan notes that "the principal may be personally liable for such contracts unless the specific fund to which he may look for payment is clearly written into the contract." Also discussed are student savings programs, property loss through vandalism and burglary, and statutory prohibitions against influencing school purchases.

11 **Wetterer, Charles M.** "Emergency Situations Involving Alleged Student Crime." Chapter 8 in *The School Principal and the Law*, edited by Ralph D. Stern. Topeka, Kansas: National Organization on Legal Problems of Education, 1978. 25 pages. ED 172 335.

Emergency situations involving suspected or alleged student crimes demand immediate action by the principal. Common sense, discretion, and caution may seem to be all that are needed to deal with such incidents; but, cautions Wetterer in this excellent article, "there are special problems—legal, physical and social—which surround such emergencies."

It is essential, then, that a principal anticipate such situations and have a general strategy prepared for each type of emergency. To help in this planning, Wetterer here presents a discussion—with numerous examples and suggestions—of the legal ramifications of the principal's actions regarding bombs and bomb threats, false fire alarms, searches and seizures, and police investigations in the schools.

Often, the principal finds himself or herself in a "no win" situation. For example, if a principal decides to search a student or the student's locker, he may have to defend himself against claims of illegal search. If the principal decides not to search, however, he may be accused "of civil or even criminal negligence." The legal precedents, which the author outlines, are probably the best guides for "reasonable" principal behavior.

The complexity of ... the principal must know to avoid charges of wrongdoing or negligence is further illustrated by the principal's interaction with the police. In most instances, "the principal may deal with minor criminal acts committed in his school and decide on suitable punishment for the offender." However, once the principal realizes that the crime is of a serious nature, it is his duty to call the police and refrain from further questioning of the student. The principal now must behave as the protector of the student in his "in loco parentis" role.

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